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5 IN THE UNITED STATES DISTRICT COURT
6
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 ROBERT JACOBSEN,

9 Plaintiff,

No. C 06-01905 JSW

10 v.

11 MATTHEW KATZER and KAMIND
12 ASSOCIATES, INC.,

13 Defendants.
14 _____/

**NOTICE OF TENTATIVE
RULING AND QUESTIONS RE
MOTIONS FOR SUMMARY
JUDGMENT**

15 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE
16 NOTICE OF THE FOLLOWING **TENTATIVE** RULING AND QUESTIONS FOR THE
17 HEARING SCHEDULED ON DECEMBER 4, 2009 AT 9:00 A.M.:

18 The Court has reviewed the parties' papers and, thus, does not wish to hear the parties
19 reargue matters addressed in those pleadings. If the parties intend to rely on authorities not
20 cited in their briefs, they are ORDERED to notify the Court and opposing counsel of these
21 authorities reasonably in advance of the hearing and to make copies available at the hearing. If
22 the parties submit such additional authorities, they are ORDERED to submit the citations to the
23 authorities only, with reference to pin cites and without argument or additional briefing. *Cf.*
24 N.D. Civil Local Rule 7-3(d). The parties will be given the opportunity at oral argument to
25 explain their reliance on such authority. The Court suggests that associates or of counsel
26 attorneys who are working on this case be permitted to address some or all of the Court's
27 questions contained herein.

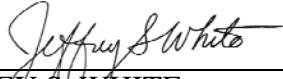
28 The Court **tentatively GRANTS IN PART AND DENIES IN PART** Plaintiff's motion
for summary judgment and **tentatively DENIES** Defendants' motion for summary judgment..

1 The parties shall each have 20 minutes to address the following questions:

- 2 1. Is the question of originality of the copied work an issue of fact or an issue that can be
3 resolved as a matter of law? Is there a dispute of fact regarding whether the selection
4 and arrangement of data in the copied files is sufficiently original to be copyrightable?
- 5 2. If the Court considers the expert reports submitted by Plaintiff, is there a dispute of fact
6 regarding the damages allegedly sustained by Plaintiff? Regardless, does the Federal
7 Circuit's holding in this matter, 535 F.3d 1373, 1378 (Fed. Cir. 2008), as well as the
8 testimony of Penny and Jacobsen indicate that Plaintiff suffered damages, even in the
9 absence of a specific monetary figure?
- 10 3. Specifically where in the record is there a dispute of fact regarding whether the scope of
11 QSI's permission was actually communicated to Plaintiff?
- 12 4. Do the parties have anything further they wish to address?

13 **IT IS SO ORDERED.**

14 Dated: December 3, 2009

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17 JEFFREY S. WHITE
18 UNITED STATES DISTRICT JUDGE